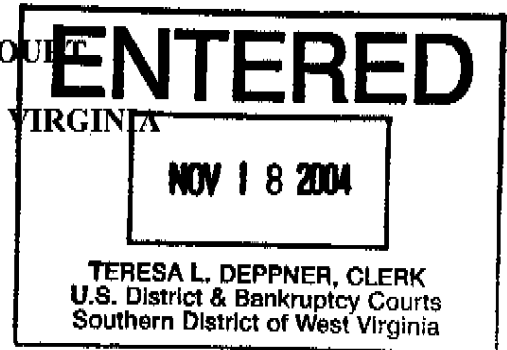


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: SERZONE
PRODUCTS LIABILITY LITIGATION

MDL NO. 1477



THIS DOCUMENT RELATES TO ALL CASES

**ORDER CONDITIONALLY CERTIFYING TEMPORARY
SETTLEMENT CLASS AND PRELIMINARILY APPROVING SETTLEMENT**

Upon consideration of the Plaintiffs' Motion for an Order Conditionally Certifying a Class Action and Preliminarily Approving Settlement, and being satisfied that the proposed Settlement Class fulfills all requirements for the certification of a temporary settlement class, conditional on the terms of the settlement agreement entered by the parties, and that the proposed Settlement Agreement meets the applicable criteria for preliminary approval and that the proposed forms of notice and the plan for dissemination of notice satisfy all applicable requirements, the Court hereby provisionally finds and **ORDERS** as follows:

1. Settlement Class. The Court has considered the submissions of the parties with regard to the temporary and conditional certification of a settlement class, and has analyzed the proposed Settlement Class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The Court provisionally finds that:

- a. *Numerosity.* The Settlement Class, consisting of thousands of persons located throughout the United States and its territories, satisfies the

numerosity requirement of *Fed.R.Civ.P.* 23(a). Joinder of these widely-dispersed, numerous Class Members into one suit would be impracticable.

- b. *Commonality.* Common questions of law and fact with regard to the injury, illness and damage allegedly caused by Serzone[®] and the alleged negligent design, marketing and labeling of Serzone[®] exist for each of the Settlement Class Members in this case. These issues are central to this case and are sufficient to establish commonality.
- c. *Typicality.* Plaintiffs allege that Bristol-Myers Squibb Company (hereinafter “BMS”) designed, marketed, and labeled Serzone[®], an unsafe product which caused injury, illness and damage. They also allege that they have sustained a range of injuries and damages. These claims are typical of every Settlement Class Members’ claim. The element of typicality is satisfied here.
- d. *Adequate Representation.* The Plaintiffs’ interests do not conflict with absent Settlement Class Members and Plaintiffs’ interests are co-extensive with absent Settlement Class Members. Additionally, this Court recognizes the experience of Class Counsel and provisionally finds that the requirement of adequate representation of the Settlement Class has been met.
- e. *Predominance of Common Issues.* Issues common to all Settlement Class Members include:
 - i. is Serzone[®] safe and effective;
 - ii. does Serzone[®] cause injury, illness and damage;

- iii. did BMS conduct appropriate testing of Serzone®;
- iv. did BMS adequately warn of the adverse effects of Serzone®;
- v. did BMS misrepresent the risk of adverse effects of Serzone®?

The proposed settlement has mooted any problem of manageability that would attend this case if it were to be tried or litigated on a class action basis, and the common issues predominate over any individual questions. Therefore, within the context of the proposed settlement, the predominance requirement of Rule 23(b)(3) is met.

- f. *Superiority of the Class Action Mechanism.* The class action mechanism is ideally suited for treatment of the settlement of this matter. Class certification for settlement purposes promotes efficiency and uniformity of judgment because the many Settlement Class Members will not be forced to separately pursue claims or execute settlement in various courts around the country.

Therefore, this Court provisionally finds that all of the requirements of *Fed.R.Civ.P.* 23(a) and (b)(3) are satisfied, and MDL No. 1477, titled *In re: Serzone Products Liability* is hereby conditionally and temporarily certified as a Settlement Class on behalf of the following class of plaintiffs:

All natural persons in the United States and its territories who purchased or used Serzone® between March 15, 1995 and October 1, 2004, their estates, administrators or other legal representatives, heirs or beneficiaries. It includes all other persons asserting the right to sue Bristol-Myers Squibb Company or any Released Party

based on their relationship with a person who purchased or used Serzone[®].

The Settlement Class does not include any individuals whose claims against BMS or any of the Released Parties arising from Serzone[®] have been resolved by release outside of this Settlement or by judgment on the merits.

The following causes of action are specifically included: breach of warranty claims (express and implied), product liability claims, state consumer protection statute claims, unjust enrichment claims, breach of the warranty against redhibitory defects claims, as well as all other claims and theories of recovery for personal injury, economic injury and for punitive damages premised upon the purchase or use of Serzone[®].

This certification is temporary and conditioned on the terms of the settlement reached by the parties.

2. Class Representatives and Class Counsel. Plaintiffs Dexter Heir, et al. are designated as Class Representatives. In Pretrial Order No. 2, filed October 7, 2002, the Court appointed Carl N. Frankovitch and Marvin W. Masters as Co-Lead Counsel for the Settlement Class. By the same pretrial order, the Court appointed Dianne M. Nast and Stanley M. Chesley as Executive Committee Members. After considering the required factors in *Fed.R.Civ.P.* 23(g), the Court appoints Carl N. Frankovitch, Marvin W. Masters, Dianne M. Nast and Stanley M. Chesley as Class Counsel.

3. Preliminary Approval of Settlement. The proposed Settlement Agreement establishes four settlement funds totaling \$70 million, which may be increased if necessary to satisfy the most seriously injured Settlement Class Members' claims. Fund A will initially contain \$30 million and may be increased to satisfy the claims of the most seriously injured

Settlement Class Members. Fund B will also initially contain \$30 million and may be increased to satisfy the claims of Settlement Class Members who were less seriously injured. Fund C will contain \$5 million and will be used to satisfy the Claims of non-seriously injured Class Members. Fund D will also contain \$5 million and will be used to satisfy the claims of Settlement Class Members who are not making a claim under Funds A, B, or C. Reached as a result of arm's length negotiations by counsel experienced in complex litigation, the proposed settlement between the Settlement Class and BMS appears, upon preliminary review, to be within the range of reasonableness warranting providing notice to the Settlement Class Members and proceeding with a Final Fairness Hearing. In making this determination, the Court has considered the current posture of this litigation and the risks and benefits to the parties involved in both the settlement of these claims and the continuation of the litigation.

Accordingly, the Court grants preliminary approval of the Settlement Agreement and the proposed plan of distribution as described in Plaintiffs' Memorandum for Preliminary Approval. The settlement will be submitted to Settlement Class Members for their consideration and for a hearing in accordance with *Federal Rule of Civil Procedure 23(e)*.

4. Notice to Settlement Class Members. The Court has considered the Notice Plan and proposed forms of Notice and Summary Notice submitted with the Memorandum for Preliminary Approval and finds that the forms and manner of notice proposed by Plaintiffs and approved herein meet the requirements of due process and *Fed.R.Civ.P.* 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice. Notice will be provided to Settlement Class Members substantially as set forth in the Notice Plan attached as Exhibit G to Plaintiff Memorandum.

The costs of preparing, printing, publishing, mailing, and otherwise disseminating the notice up to a maximum of \$950,000 will be paid by BMS in accordance with the terms of Settlement Agreement.

5. Plan of Distribution: Inventory Form, Claims Process and Schedule of Payments.

The Court has considered the Plan of Distribution, which consists of two phases: (1) inventory filing and (2) claims processing. The Court preliminarily approves the inventory filing requirement, as described in the Settlement Agreement and Plaintiffs' Memorandum, and the Inventory Form in the form attached to Defendant's Memorandum in Support of Inventory Requirement, consistent with the dates established herein. The Court also preliminarily approves the Claims Process, including the Schedule of Payments, as described in the Settlement Agreement and Plaintiffs' Memorandum.

6. Final Fairness Hearing. A Final Fairness Hearing will be held on **June 30, 2005 in Charleston, West Virginia at 10:00 a.m.** to consider whether the Settlement and Plan of Distribution should be given final approval. The dates or times of this hearing may be changed without further notice to the Settlement Class. Class Counsel shall post any changes to the hearing date or time on the website established as stated in the Notice Plan.

7. Exclusion Requests, Objections, and Claims. The Notice to Settlement Class Members shall include the following information concerning deadlines:

- a. *Exclusion Requests.* Any Settlement Class Member wishing to exclude himself or herself from the Settlement Class must sign a written request to be excluded containing the information stated on page 8 of the Class Notice, and this exclusion request must be filed on or before **April 8, 2005** and served by mail to the post office box to be designated in Charleston,

West Virginia, as established by Class Counsel in the name of the Clerk of Court for the United States District Court for the Southern District of West Virginia.

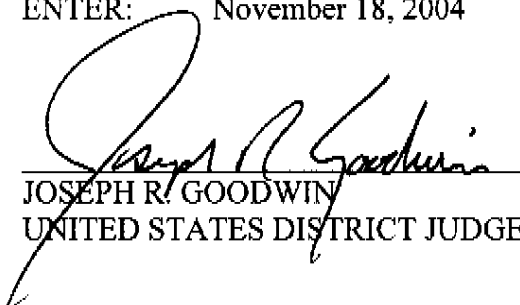
- b. *Comments and Objections.* Any Settlement Class Member or other interested party wishing to submit comments to support or oppose any aspect of the Settlement Agreement may do so in writing, without the necessity of retaining counsel or making any formal appearance. All written comments in support of or opposition to any aspect of the settlement agreement must be filed with the clerk of the court no later than **April 29, 2005**, and served by mail to the three addresses set forth in the Class Notice. Any Settlement Class Member or other interested party, intending to appear at the Fairness Hearing in person or through his or her attorney, must notify the court in writing no later than **June 10, 2005**.
- c. *Responses to Objections.* Responses to any objections must be filed and served on or before **June 10, 2005**.
- d. *Claims.* Settlement Class Members must follow a two-step process in order to make a claim. First, Settlement Class Members must complete, file and serve the Inventory Form by **May 13, 2005**. Settlement Class Members must then file and serve Claim Forms with supporting documentation within 90 days after final judicial approval, if such approval occurs.

8. Class Counsel Fees and Expenses. The Court will separately consider a request for reasonable attorneys' fees and expenses for Class Counsel. Class Counsel will file a motion

requesting the Court to award reasonable attorneys' fees and expenses not to exceed \$20 million, which shall be filed no later than the Fairness Hearing Date – **June 30, 2005**. Any objections to this request shall be filed no later than 30 days after the Fairness Hearing, and any response to objections shall be filed no later than 10 days thereafter. The attorneys' fees and expenses awarded to Class Counsel by the Court will be paid by BMS separate and apart from its payments to any settlement fund.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: November 18, 2004



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE